HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 19 of 2007

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Applicants Plaintiffs	: 1.	Basant Kumar Gupta, aged about 46 years, S/o Badri Prasad.
	: 2.	Rajendra Prasad Gupta, aged about 40 years, S/o Badri Prasad.
		Both R/o Takhatpur, Tahsil : Takhatpur, Distt. Bilaspur.
		Versus
Respondents Defendants	: 1.	Krishna Kumar Gupta, aged 32 years.
	: 2.	Basant Kumar Gupta, aged about 35 years, S/o Babulal
		Both R/o Jarhabhata, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

MISC. CIVIL APPEAL UNDER SECTION 43 RULE 1 OF C.P.C. AGAINST THE ORDER PASSED UNDER ORDER 39 RULE 1 & 2 OF C.P.C.

Shri Srikumar Agrawal, Sr. advocate with Shri Anand Gupta for the appellants/plaintiffs.

ORAL ORDER
(Passed on 10.05.2007)

This Misc. Appeal is being disposed of finally today at the stage of admission, without notice to the respondents/defendants.

2. The appellants are aggrieved by an order dated 12.04.2007 passed by 3rd Additional District Judge, Bilaspur, in Civil Suit No. 16-A of 2007 whereby the application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. filed by the appellants/plaintiffs was dismissed.

3. The appellants/plaintiffs had, in the application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. filed before the lower Court, not only prayed for a temporary injunction restraining the defendants from alienating the suit house till disposal of the suit but also for a mandatory injunction for delivering vacant possession of the suit house to the plaintiffs.

4. Shri Srikumar Agrawal, learned Sr. Advocate submitted that he does not assail the impugned order of the lower Court refusing to grant mandatory injunction.

5. The only point urged by Shri Srikumar Agrawal, learned Sr. Advocate for the appellants/plaintiffs in this appeal is that learned 3rd Additional District Judge, Bilaspur, while rejecting the prayer for mandatory injunction, ought to have considered the prayer for temporary injunction restraining the defendants from alienating the suit house till disposal of the suit.

6. I have perused the impugned order dated 12.04.2007 and find that the submission of learned Sr. Advocate for the appellants/plaintiffs has substance since the learned 3rd Additional District Judge did not at all consider the prayer for temporary injunction for restraining the defendants from alienating the suit house till disposal of the suit.

7. Considering the facts and circumstances of the case and the pleadings on which the suit was instituted, the learned lower Court is directed to pass appropriate orders on the prayer of the appellants/plaintiffs for grant of temporary injunction to restrain the defendants from alienating the suit house till disposal of the suit. Ordered accordingly.

Sd/-
Dilip Raosaheb Deshmukh
Judge